



Recommendation 85-1

Legislative Preclusion of Cost/Benefit Analysis

(Adopted June 13, 1985)

Cost/benefit analysis¹ may ordinarily be applied by an agency to a regulatory action, except when Congress has forbidden its use or has specified, in the authorizing legislation, the precise regulatory outcome Congress desired. Any legislative directive short of complete specificity, however, can lead to disputes as to whether Congress intended—or even contemplated—the application of cost/benefit analysis by the agency in the agency's adoption of legislative rules to carry out the program. Disputes about the agency's authority can undermine the regulatory program, and may last for decades, only to be resolved, and then perhaps only temporarily, in a judicial—rather than a legislative—forum. Protracted disputes over an agency's authority to apply cost/benefit analysis can be largely avoided by direct congressional attention to the matter.

Recommendation

When enacting regulatory legislation, if Congress intends to prohibit the application of cost/benefit analysis by the agency charged with administering the regulatory program, Congress should explicitly so state.

Citations:

50 FR 28363 (July 12, 1985)

__ FR ____ (2012)

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¹ The term "cost/benefit analysis" is used here to include all forms of analysis (cost/ benefit, cost effectiveness, risk/benefit, etc.) in which the potential costs, benefits, and risks of a proposed action, along with possible alternative courses of action, are quantified if feasible and appraised in relation to one another. See Recommendation 79-4.